

Issues Facing the Education Sector: A Youth Court Perspective

**THE YOUTH COURT TE KOOTI TAIOHI
OF NEW ZEALAND O AOTUAROA**

Some Background Notes

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Introduction

As Principal Youth Court Judge, I claim no expertise in education law or policy. However, to be involved in the Youth Court is daily to confront young offenders, almost all of whom are not part of the education system. While there are no accurate figures, anecdotally it is thought that up to 65-70% of offenders in the Youth Court (and only the most serious 20% of offending results in Youth Court charges) are not formally “engaged” with the education system. The word “engaged” is used advisedly. Technically, many are not truants, because they are not meaningfully enrolled at a secondary school to be a truant from. They are simply not in the formal education system. They are drifting. They are between schools. They may have been excluded, are not now enrolled elsewhere, or are awaiting placement in alternative education. Or they have drifted out of alternative education and are waiting for a course, seeking employment, or sadly, and too often, simply doing nothing.

My Main Point

Attending and participating in school (or a meaningful alternative) is a highly protective factor against risk. It builds resilience and the potential for positive life outcomes.

The question those concerned about youth offending most often ask is “what is the single most important step that could be taken to reduce youth offending?” Is there a “king hit”? Of course there isn’t! However, keeping every young person actively involved in some form of education until the age of 16 would be a very good start. Especially as Police figures indicate that, generally, 25% - 30% of youth offending takes place between 9.00 am and 3.00 p.m. Monday – Friday. In some areas it is much higher. Although rather a simplistic analysis, just keeping young people at school could, conceivably, reduce youth offending by 25%!

- As a very crude generalisation, up to 80% of young offenders commit about 20% of total youth offences. These offenders are often described in the literature as “adolescent limited” or “teenage only” or “desisters”. Few of these offenders come to the Youth Court, nor need to come to the Youth Court. Most are dealt with by the Police Youth Aid section, by prompt, firm, creative community based interventions. Most of these offenders are at school. Most (80%) never re-offend. Their offending could be said to be a consequence of a still developing brain, particularly the frontal lobe of the brain which governs impulse control and wise decision making. Typically, this group of young offenders lead largely ordered lives and are engaged in school. Their offending is often connected to heavy cannabis use, a poor choice of friends and/or significant family/parental upheaval.
- However, 5-15% of young offenders commit 40-60% of offences; e.g. Invercargill where 11% of young offenders commit 48% of offences. They are referred to in the literature as “life course,” or “early on-set,” or “serious young offenders”. All of these offenders come to the Youth Court. (Between 15 – 25% of all Youth Offenders appear in the New Zealand Youth Court.)
- About 3000 young people appeared before the Youth Court in 2013. Given repeats, we think there might be up to 4,000 actual appearances. Of that number, 1 – 2,000 are serious, persistent, “life course offenders”. They could be referred to as today’s “human time bombs” and come with a constellation of usually co-occurring issues, chief of which are:
 - 81% are male. However the number of young women who offend, especially violently, is increasing.
 - 70 - 80% have a drug and/or alcohol problem, and a significant number (up to 30%) are drug dependent/addicted.
 - **65 - 70% are not engaged with school – most are not even enrolled at a secondary school. Non-enrolment, rather than truancy, is the central problem for the Youth Court.**
 - Most experience family dysfunction and disadvantage; and most lack positive male role models.
 - Many have some form of psychological disorder, especially conduct disorder, and display little remorse, let alone any victim empathy. Many will also have neuro-developmental issues such as traumatic brain injury, fetal alcohol spectrum disorder, autism, attention deficit disorder, speech and communication disorders, a specific learning disability (eg dyslexia), or a combination of these.
 - Māori seem to be disproportionately represented at every stage of the youth justice process. 22% of the 14-16 year old population is Māori. However, Māori make up 52% of apprehensions of 14-16 year olds and around 54% of Youth Court appearances (over 90% in some areas of high Māori population). They are given 65% of supervision with residence orders (the highest Youth Court order before conviction and transfer to the District Court). These figures are a particular challenge to the youth justice system, and to all working with young offenders.

- Many, up to 70%, have a history of abuse and neglect, and previous involvement with Child, Youth and Family Services.

Offenders such as these pose a serious problem for every Western country and present a challenge for any youth justice system. Many in this small group continue to re-offend. No youth justice system yet, has been able to eliminate all re-offending by this hard core group.

This small group are socially disruptive, represent a disproportionate drain upon their communities, and are tomorrow's potential adult career criminals. As such they are perhaps controversially described as today's "unexploded human time bombs".

Involvement in school is one of the big four protective factors against risk

Involvement in education is one of the "big four" protective factors against future adverse life outcomes, including criminal offending.¹ The "big four" areas / risk factors for young people are family, school, friends and community involvement and connection.

The importance of school participation was emphasised in the important research by Ms Kaye McLaren:

"Lipsey (1992) found that impact on delinquency was more strongly linked with participation in school by young people than with school achievement or changes in psychological measures. Neither of the latter had a significant relationship with delinquency. Simply participating in school appeared to lead to changes in psychological measures, interpersonal adjustment, academic performance and vocational accomplishment. Lipsey concluded that "while change in psychological variables and interpersonal adjustment... does not seem to be closely linked to change in... delinquency, it does seem to be closely linked to change in... school participation which, in turn, is linked to change in delinquency" (1992:142). So it appears that increasing participation in school by young people is a key part of reducing their antisocial behaviour and offending."² (Emphasis added).

The link between non-school attendance and crime

Not all truants or non-school attendees commit offences or become young criminals. However, the great majority of offenders before the Youth Court are not at school.

The link between non-school attendance and offending may not be causative, but there is certainly a clear association. Moreover, non-school attendance is seldom the problem. It is usually a symptom of much greater problems at home, with peers,

¹ McLaren, Kaye. "Tough is not Enough – Getting smart about Youth Crime". A review of research on what works to reduce offending by young people. Ministry of Youth Affairs, June 2000.

²Ibid, p31.

or with drugs/alcohol/psychological or psychiatric issues or with learning/behavioural problems. An unresearched issue in the New Zealand is the number of young offenders who may have specific learning disabilities, or other neuro-developmental disorders.

As noted by Judge Fred McElrea in a 1997 paper,³ an American writer recently summed up the connection between education and crime this way:

"Truancy may be the beginning of a lifetime of problems for students who routinely skip school. Because these students fall behind in their schoolwork, many drop out of school. Dropping out is easier than catching up. Truancy is a stepping stone to delinquency and criminal activity. A report compiled by the Los Angeles County Office of Education on factors contributing to juvenile delinquency concluded that chronic absenteeism is the most powerful predictor of delinquent behaviour. Truant students are at a higher risk of being drawn into behaviour involving drugs, alcohol or violence. A California deputy assistant attorney who handles truancy cases says he has "never seen a gang member who wasn't a truant first".⁴

Educational Disengagement and Health Issues

Disengagement from school is a red flag for a high risk of adverse health outcomes. According to experts from the Auckland District Health Board (ADHB), young people who subsequently die have significantly higher rates of disengagement from school than the normal youth population:

"Education is one of the strongest predictors of good health status. Young people who achieve at school are more likely to grow up healthy and successful. Conversely, young people who drop out of school prematurely are more likely to engage in risky behaviours and to have negative health and social outcomes. The ultimate negative outcome is early death. Child and Youth Mortality Review Groups (CYMRG) review deaths of children and youth aged 28 days to 24 years to identify the circumstances leading up to a death, specifically looking for points of intervention which may prevent similar deaths from occurring. In the 3 years since starting reviews, the ADHB CYMRG has identified a high rate of school disengagement and dropout in the lives of young people who subsequently die from any cause".⁵

Proposed research is to be carried out by the ADHB to determine the frequency of stand-downs, suspensions, exclusions and expulsions from school among reviewed mortality cases and to compare information with national population-based data.

The correlation between educational disengagement and adverse health outcomes has prompted local action by the ADHB, and school based health services now conduct health assessments on suspended or disengaged youth. School stand-

³ McElrea, FWM., "Win-win" Solutions to School Conflict, a paper presented at the Contemporary Issues in Education Law: Strategies for Best Practice conference, Sydney, 7-9 July 1997.

⁴ Garry, Eileen M., "Truancy: First Step to a Lifetime of Problems", in *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention, US Department of Justice), October 1996, p1.

⁵ Leversha, Alison and Peacock, Sue, *Being stood down from school is a cry for help*, 2014.

downs have also been added as a specific objective in the Youth Health Plan for the Auckland Region.

Specific issues for education

Those who work with youth offenders are concerned about a number of issues in relation to education. A detailed analysis of these issues is outside the scope of this paper. It is sufficient simply to list the key issues. Many of these were helpfully identified in detail by now Dame Pat Harrison, former principal of Queen's High School, Dunedin.⁶

- **School Participation:** The fundamental issue, from the perspective of the Youth Court, is simply school participation. Although a crude generalisation, there is truth in the statement that "every young person kept at school is one less potential young offender". There is a great opportunity here (and with respect, a great responsibility) for the education sector to at least indirectly reduce youth (and subsequent adult) offending.
- **Rates of Non-enrolment:** A national database of students that are enrolled in school has now been compiled. This is considered a significant step forward. 'Enrol' is an electronic register that catalogues each student currently enrolled in a school. The system will pick up if a student is no longer enrolled in a school for more than 20 consecutive days and enquiries will be made as to why that student has not re-enrolled in another school. Enrol shows that there are around 2300 students that are currently not enrolled in any school and most of these are secondary school students. Although Enrol is a useful tool to identify young people who have "fallen through the cracks" in the education system, the exact extent of the problem still needs to be addressed, and this would appear to be a key priority.
- **Truancy:** Rates of unjustified absences remain unacceptably high. In 2011, an attendance survey found a truancy rate of 4%. That constitutes about 29,000 students absent from school without justification on any given day. Truancy is significantly more likely for those who are Māori (38%) or Pacific Island (14%), and who are from a low socio-economic area. More than likely they come from a town and are at a secondary school of between 251-500 students. In February 2013, the Government rolled out a new Integrated Attendance Service (IAS) that combines the old Non-Enrolled Truancy Service (NETS) and the District Truancy Service (DTS) into one integrated service. IAS aims to support schools to better manage attendance and reduce truancy and non-enrolment by supporting students to return to school. If a student is unjustifiably absent, the school will complete a referral and the Attendance Advisor in their area will follow up the notification and try and get to the bottom of the student's non-attendance.

⁶ Pat Harrison, "Youth Justice: Education Issues" A Discussion Document commissioned by the Institute of Public Policy, School of Government, Victoria University and the Principal Youth Court Judge, May 2004.

The new attendance system relies heavily on inter-agency and community support to help raise attendance and engagement. One of the major challenges with this system is the huge caseload for the local Attendance Advisor who might have up to 100 cases at any given time and the Ministry advises that resources and training are issues being addressed. Only time will tell if the new system will help support those 29,000 students to get back to school each day and engaged in their learning.

- **Suspensions/exclusions from secondary schools:** In 2012, levels of suspensions/exclusions, in both primary and secondary schools, fell to their lowest in 13 years of recorded data. In 2012, 3,061 students were suspended, and 1,257 students were excluded or expelled. Males and Māori were vastly over-represented while drugs (and substance abuse) and continued disobedience remained the most frequent reasons for suspensions. There is a clear correlation between the socio-economic mix of the school and high rates of exclusions. An associated issue concerns the responsibility of an excluding school to attempt to re-enrol an excluded student in another secondary school. The point needs to be made that every excluded student is problem relocated, not solved. There is a real challenge for schools to hold on to all students wherever possible, although recognising that sometimes (eg for safety reasons) exclusion is inevitable. Simplistic as it is to say, every excluded student is one more potential young offender. And if exclusions are necessary, there are surely reciprocal responsibilities on other schools to try, wherever possible, to enrol that student.
- **Suspensions/exclusions of Māori students:** It is worth celebrating that rates of suspensions and exclusions are generally decreasing across the board. Special initiatives to reduce suspensions/exclusions of Māori students have resulted in a decline in Māori exclusion levels. However, Māori students are still significantly more likely to be suspended/excluded than students from any other ethnic group. This is concerning. And while complex issues do not have simple solutions, it does beg the question, why is this issue particularly important in a youth justice context? We know that Māori students are being exited from the education system at a disproportionate rate. We also know that young Māori are entering the youth justice system at a disproportionate rate. These may be just two snapshots of information, but we shouldn't underestimate their interrelationship.
- **Alternative Education:** Some students will inevitably be alienated from school. What becomes of them? Some form of alternative education system is probably necessary. Alternative Education (AE) is an initiative for students who have become alienated from "mainstream" high schools. Many of the students placed in AE have been long term truants or have been suspended from one or more schools. The AE policy aims to re-engage students in some form of "mainstream" secondary or tertiary education over the 12 – 18 months that a student may spend there. Approximately 3500 students participate in AE each year, two thirds of which are Māori and two thirds of which are male. Ministry of Education data

indicates that just over one third of students who leave AE each year return to secondary education, training or employment.⁷

There are some important issues around the alternative education debate. Is there a national strategy as to the quality of alternative education? Who should be eligible for it? Is alternative education a threat to mainstream education if the barriers to entry are too low? Should alternative education be limited to students of secondary school age, or should it include those of intermediate age as well? If so, are the aims for alternative education the same for each age group? Should there be a seamless transition between secondary school and alternative education? Is the aim to return "AE" students to "mainstream" education, a priority? Is there clear quality control of standards and performance of all alternative education providers? Why do a small (but significant) number of students not make the transition?

- **Correspondence School:** Is this excellent service sometimes used as a virtual "dumping ground" for students who simply cannot cope or survive within mainstream education or any other alternative? Is it fair to place this burden on the Correspondence School, if it is done simply to ensure that problematic youths are technically enrolled? If so, is Correspondence properly resourced to do this challenging and important job?
- **Exemptions:** The Secretary of Education can exempt a 15-year-old student from attendance where the educational problems, conduct of the student or suitability of the school environment are such to convince the Secretary to do so. In the early 2000s, exemptions were a major concern of the Youth Law Tino Rangatiratanga Taitamariki. In a paper presented at a Youth Law policy conference in November 2003, solicitors from Youth Law noted:

"In our experience this option is used frequently with regards to 15-year-old students excluded from school who fail to be accepted into another school as a result of their exclusion and require considerable efforts by the Ministry of Education to facilitate a placement".⁸

A key issue was whether exemptions were granted too easily. In 2002, early leaving exemptions were granted to 3,848 students, for the purposes of entering employment or being enrolled on Youth Training Courses. There was a question about quality standards of some courses, and the extent to which they could address educational under-achievement.

The Ministry of Education has since strengthened its early leaving application and approval process. Also, the Ministry is now responsible for providing greater resources to schools to cope with those non-exempted students. Subsequently, the rate of early leaving exemptions for 15 year olds has dropped by over 90% since 2006. In 2012, there were only 313 early leavers, which is a sharp drop from nearly 4,000 early leavers in 2006. However, although the decline in rates

⁷ Ministry of Education, *Alternative Education: An Evaluation of the Pedagogical Leadership Initiative (September 2012)*, October 2012.

⁸ Hancock, J., and Trainor, C., *Ensuring consistency with the Education Act 1989: In a child's best interests*.

of exemptions granted between 2006 and 2011 was similar for all ethnic groups, Māori students still have much higher rates of early leaving exemptions compared with students from other ethnic groups.⁹

- **Targeted intervention for conduct-disordered young people at school:**

Professor David Ferguson has commented that, in his view, all roads [in the area of youth justice] lead to and from conduct disorder. Conduct disordered young people (boys, in particular) are violent, aggressive, oppositional, and rule-breaking. They need professional attention so they are not dangerous to themselves or those around them, let alone to assist them stay in or return to education.

Dr John Church in his important 2003 Report on this issue, noted that about 7-9% of all boys will be persistent anti-social children many of whom will go on to become delinquent youth and then adult offenders.

These boys present a significant challenge to the education sector. Teachers are understandably ill-equipped in this regard, and sometimes no amount of teacher training will assist, such are the depth of the problems. Only professionally trained psychologists can work meaningfully with these young people and their families.

In short the "Education Sector" cannot solve by itself the problem of seriously at risk youth. Teachers are not police officers, or social workers. School, however, remains the best entry point and the least threatening environment where the issues facing these young people and their families can be identified and addressed.

In this respect, the work of the following researchers is profoundly important:

Professor John Church (College of Education, University of Canterbury)

Professor John Werry (Professor of Psychiatry, University of Auckland)

Professor David Ferguson (Longitudinal Study, School of Medicine, University of Canterbury Christchurch)

Professor Ritchie Poulton (Longitudinal Study, Otago University)

Conclusion

The number of young people outside the education system (excluded, or non-enrolled) is at least 2,000. This is only a **small proportion** of the 300,000 plus young people of secondary school age. But these young people who are outside the school system, are virtually **the whole** of the problem in Youth Court. This is why focusing on keeping young people in school is an absolutely crucial aim in terms of the youth justice.

⁹ Ministry of Education *Early leaving exemptions*, 2013.